

CV 12 - 3363

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MATSUMOTO, J.

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U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BOARDS OF TRUSTEES OF THE INSURANCE,
ANNUITY, AND APPRENTICESHIP
TRAINING FUNDS OF SHEETMETAL
WORKERS' INTERNATIONAL
ASSOCIATION, LOCAL UNION NO. 137,

Plaintiffs,

v.

FRANK TORRONE & SONS, INC.,

Defendant.
-----X

MANN. M.J.

Case No.
COMPLAINT

Plaintiffs, by their attorneys, Spivak Lipton LLP, bring this action to collect delinquent employee benefit plan contributions owed by Frank Torrone & Sons ("Defendant").

Complaining of Defendant, Plaintiffs respectfully allege as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction of this action under Sections 502(a)(3), 502(e)(1), and 502(f) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1132(a)(3), 1132(e)(1), and 1132(f).

2. Venue lies in the Eastern District of New York pursuant to ERISA § 502, 29 U.S.C. § 1132(e)(2).

PARTIES

3. At all relevant times, Plaintiffs, Boards of Trustees of the Insurance, Annuity, and Apprenticeship Training Funds of Sheet Metal Workers' International Association, Local Union No. 137 ("Trustees") have administered and now administer the Insurance, Annuity, and Apprenticeship Training Funds of Sheet Metal Workers' International Association, Local Union No. 137 ("Insurance Fund," "Annuity Fund," and "Apprenticeship Training Fund," collectively the "Funds"). The Funds are principally administered at 21-42 44th Drive, Long Island City, New York 11101.

4. At all relevant times, Plaintiffs have been fiduciaries of the Funds, employee benefit plans within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), and established pursuant to Section 302(c)(5) of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 186(c)(5), as amended. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), the Trustees are authorized to enforce the provisions of Title I of ERISA by, among other things, the filing and prosecution of civil claims against fiduciaries and others who violate ERISA.

5. At all relevant times, Defendant is and has been engaged in the sign business, an industry affecting commerce within the meaning of Sections 3(5), 3(11), 3(12), and 4(a)(1) of ERISA, 29 U.S.C. §§ 1002(5), 1002(11), 1002(12), and 1003(a)(1), and of Sections 2(2), 2(6), and 2(7) of the LMRA, 29 U.S.C. §§ 152(2), 152(6), and 152(7). Defendant's principal place of business is 400 Broadway, Staten Island, New York 10310.

FACTS

6. At all relevant times, Defendant and Local 137, Sheet Metal Workers' International Association, AFL-CIO ("Local 137") have been parties to a collective bargaining agreement ("Agreement") governing the wages, hours, and working conditions of certain of its employees.
7. The Agreement obligates Defendant to make timely contributions to the Funds for its employees covered by the Agreement.
8. For the period November through December 2010 Defendant failed and refused to make all required contributions to the Funds. Defendant has made certain payments for such period, but, as set forth herein, Defendant has not made complete payment and certain payments remain outstanding.
9. Plaintiffs have asked Defendant to perform its obligations, but Defendant has refused and failed to so perform.
10. Upon information and belief, the amount due and owing by Defendant for the above described periods is estimated to be at least: \$2,788.73 to the Insurance Fund; \$2,099.28 to the Annuity Fund; and, \$458.05 to the Apprenticeship Training Fund; plus interest on each such amount.
11. Defendant willfully breached its fiduciary obligations in withholding and diverting contributions due and owing to the Funds. By the conduct and omissions described in

paragraphs 8 through 10 above, Defendant has failed to discharge its duties with respect to the Funds.

STATEMENT OF CLAIM OF THE INSURANCE FUND

12. Pursuant to Section 515 of ERISA, 29 U.S.C. § 1145, Defendant is liable to Plaintiffs for the following approximate amounts:

- (a) All unpaid contributions for the period November through December 2010 in the amount of \$2,788.73 and all additional unpaid contributions as of the date of judgment pursuant to 29 U.S.C. § 1132(g)(2)(A);
- (b) Interest on all unpaid contributions at the rate of 10% for November through December 2010, with all additional unpaid interest as of the date of judgment pursuant to 29 U.S.C. § 1132(g)(2)(B);
- (c) Liquidated damages, in the amount of interest on the unpaid contributions or 20 percent of all unpaid contributions, whichever is greater, pursuant to 29 U.S.C. § 1132(g)(2)(C); and
- (d) Reasonable attorneys' fees and the costs of the action pursuant to 29 U.S.C. § 1132(g)(2)(D).

STATEMENT OF CLAIM OF THE ANNUITY FUND

13. Pursuant to Section 515 of ERISA, 29 U.S.C. § 1145, Defendant is liable to Plaintiffs for the following approximate amounts:

- (a) All unpaid contributions for the period November through December 2010 in the amount of \$2,099.28, and all additional unpaid contributions as of the date of judgment pursuant to 29 U.S.C. § 1132(g)(2)(A);

- (b) Interest on all unpaid contributions at the rate of 10% for November through December 2010, with all additional unpaid interest as of the date of judgment pursuant to 29 U.S.C. § 1132(g)(2)(B);
- (c) Liquidated damages, in the amount of interest on the unpaid contributions or 20 percent of all unpaid contributions, whichever is greater, pursuant to 29 U.S.C. § 1132(g)(2)(C); and
- (d) Reasonable attorneys' fees and the costs of the action pursuant to 29 U.S.C. § 1132(g)(2)(D).

STATEMENT OF CLAIM OF THE APPRENTICESHIP TRAINING FUND

15. Pursuant to Section 515 of ERISA, 29 U.S.C. § 1145, Defendant is liable to Plaintiffs for the following approximate amounts:

- (a) All unpaid contributions for the period November through December 2010 in the amount of \$458.05, and all additional unpaid contributions as of the date of judgment pursuant to 29 U.S.C. § 1132(g)(2)(A);
- (b) Interest on all unpaid contributions at the rate of 10% for November through December 2010, with all additional unpaid interest as of the date of judgment pursuant to 29 U.S.C. § 1132(g)(2)(B);
- (c) Liquidated damages, in the amount of interest on the unpaid contributions or 20 percent of all unpaid contributions, whichever is greater, pursuant to 29 U.S.C. § 1132(g)(2)(C); and
- (d) Reasonable attorneys' fees and the costs of the action pursuant to 29 U.S.C. § 1132(g)(2)(D).

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request entry of a judgment against Defendant and in favor of Plaintiffs:

- (a) For unpaid contributions to the Insurance Fund in the amount of \$2,788.73;
- (b) For unpaid contributions to the Annuity Fund in the amount of \$2,099.28;
- (c) For unpaid contributions to the Apprenticeship Training Fund in the amount of \$458.05;
- (d) For interest on those amounts;
- (e) For liquidated damages;
- (f) For plaintiffs' costs and reasonable attorneys' fees incurred in prosecuting this action;
- (g) For any additional contributions due and owing at the time judgment is entered, together with applicable interest, liquidated damages, and costs and fees; and
- (h) For such other and further relief as the Court deems just, equitable, and proper.

Dated: New York, New York
July 6, 2012

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